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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,880	03/26/2001	Sean E. Trowbridge	MS167381.1	7613
27195 7590 06/16/2008 AMIN. TUROCY & CALVIN, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			EXAMINER RUTTEN, JAMES D	
			ART UNIT	PAPER NUMBER
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			06/16/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SEAN E. TROWBRIDGE

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Application No. 09/817,880  
Technology Center 3700

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Mailed: June 13, 2008

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Before DALE M. SHAW, *Chief Appeals Administrator*

SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on February 14, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On April 26, 2007, appellant filed an Appeal Brief. On page 5, under the heading “Grounds of Rejection to be Reviewed (37 C.F.R. 41.37(1)(vi)) ” the Appellant stated in part:

C. Whether claims 3 and 4 are unpatentable under 35 U.S.C. § 103(a) over Breslau et al., Spyker et al., Armstrong, and **Knight**, and further in view of Fogarty et al. (U.S. 6,721,946).

D. Whether claim 18 is unpatentable under 35 U.S.C. § 103(a) over Breslau et al., Spyker et al., Armstrong, and **Knight**, and further in view of Nelin et al. (U.S. 6,253,368).

In response, an Examiner's Answer was mailed on July 31, 2007. While the Answer notes that "[t]he appellant's statement of the grounds of rejection to be reviewed on appeal is correct . . ." [page 2], the following corresponding § 103 rejections were made:

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breslau, Spyker, and Armstrong as applied in the above rejection of claims 1, 2, 5-10, 12-17, 19, 30, and 31, and further in view of prior art of record U.S. Patent Number 6,721,946 to Fogarty et al. (hereinafter "Fogarty").

Claim 18 is rejected under 103(a) as being unpatentable over Breslau, Spyker, and Armstrong as applied in the above rejection of claims 1, 2, 5-10, 12-17, 19, 30, and 31, and further in view of prior art of record U.S. Patent Number 6,253,368 to Nelin et al. (hereinafter "Nelin").

Thus, the Examiner does not appear to rely on the Knight reference in rejecting claims 3, 4, and 18. This is not consistent with page 2 of the Advisory Action of January 25, 2007, where the Examiner appears to acknowledge that Knight is relied on for a specific teaching.

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In addition, a review of the file reveals that claim 33 in the appendix of the Appeal Brief is not consistent as amended in the Amendment filed on December 15, 2006, which was entered per the Advisory Action of January 25, 2007.

Lastly, an Examiner's Answer was mailed July 31, 2007. Section § 1207.02 of the Manual of Patent Examining Procedure (MPEP) (8<sup>th</sup> Ed., Rev. 3, August 2005) states:

**Requirements for Examiner's Answer**

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

It is noted that Claim 33 was rejected as follows:

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breslau in view of prior art of record U.S. Patent 6,457,122 to **Ramezani** (hereinafter "Ramezani"), Knight, and Spyker.

The Examiner's Answer does not list the Ramezani reference under the "Evidence Relied Upon."

Accordingly, it is

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**ORDERED** that the application is returned to the Examiner for the following:

- 1) to clarify the grounds of rejection for claims 3, 4, and 18;
- 2) to include the correct version of claim 33 in the Appendix;
- 3) to submit a revised Examiner's Answer which corrects the "Evidence Relied Upon" section; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/dal

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